

AMENDED IN SENATE JULY 12, 2001
AMENDED IN SENATE JULY 10, 2001
AMENDED IN SENATE JUNE 21, 2001
AMENDED IN ASSEMBLY MAY 30, 2001
AMENDED IN ASSEMBLY MAY 1, 2001
AMENDED IN ASSEMBLY APRIL 19, 2001
AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Migden
(Principal coauthor: Senator Machado)

February 21, 2001

~~An act to add Section 10247.5 to the Business and Professions Code, to add Chapter 7.6 (commencing with Section 1922) to Title 4 of Part 4 of Division 3 of the Civil Code, and to add Sections 3398, 7508, 22168, and 50511 to the Financial Code, relating to lending. An act to add Division 1.6 (commencing with Section 4970) to the Financial Code, relating to lending.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. Loans secured by real property.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real

Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would impose various requirements on consumer loans secured by real property, including requiring a person who originates a consumer loan to establish and implement a best lending practice plan that meets certain minimum standards. The bill would prohibit various acts in making consumer loans, including the following: failing to consider the financial ability of a borrower to repay the loan, selling disability, unemployment, or life and property credit insurance without full disclosure of certain facts relevant to the loan, making a loan to a mentally incapacitated person, obtaining or inducing an agreement or other instrument that contains blanks to be filled out after execution, intentionally delaying the closing of a loan for the sole purpose of increasing the interest, costs, fees, or charges payable by a borrower, engaging in fraudulent and deceptive underwriting practices, engaging in false or misleading advertising or unfair competition, and violating various federal and state laws applicable to lending. The bill would provide that a violation of its provisions would be subject to a civil penalty and would also make a violation a crime punishable by a fine or imprisonment in a county jail. Because the bill would create new crimes, it imposes a state-mandated local program.

The bill would also make a statement of legislative findings and intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.~~



~~This bill would prohibit real estate brokers and agents, commercial and industrial banks, savings associations, finance lenders, and residential mortgage lenders that make or service high-cost residential mortgage loans or consumer loans secured by liens on real property to consumers whose household income is at or below 120 percent of the median household income for the area from engaging in the following lending practices in the making of high-cost loans: making a subsequent loan to refinance the original loan that results in no substantial net economic benefit, selling of additional products in the loan agreement, making of a loan without regard to the borrower's ability to repay, and charging of fees for loan services that bear no reasonable relationship to the value and cost of services actually performed. The bill would define a high-cost loan to mean a loan that has an annual percentage rate in excess of a specified rate or that has points and fees in excess of 5 percent of the loan amount.~~

~~Because willful violations of these provisions with respect to savings associations, real estate brokers, and residential mortgage lenders would be crimes, this bill would impose a state-mandated local program by creating new crimes.~~

~~This bill would also impose various requirements with respect to residential mortgage loans and consumer loans secured by liens on real property made or serviced by specified lenders. A willful violation of these provisions would be a crime and would permit a court to rescind the loan contract and award fees and costs, as specified.~~

~~This bill would also make a statement of legislative findings and intent.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature finds and declares all of the~~
- 2 ~~SECTION 1. The Legislature finds and declares all of the~~
- 3 ~~following:~~



1 (a) Recent experience has shown that some unscrupulous
2 lenders and brokers engage in abusive practices in connection
3 with loans secured by real property.

4 (b) There is a lack of uniform and comprehensive regulations
5 to ensure that lenders and brokers licensed in this state deliver the
6 best possible mortgage loans for which their customers are
7 qualified.

8 (c) Some businesses engaged in making or brokering real estate
9 loans have adopted their own best lending practices and peer
10 review systems to assist themselves and state regulators in the
11 detection and prevention of predatory and abusive lending
12 practices.

13 (d) Existing laws regulating the origination of mortgage loans
14 do not expressly prohibit persons from controlling or otherwise
15 assisting others in engaging in lending practices that are unlawful,
16 unfair, deceptive, or fraudulent.

17 (e) Additionally, as a matter of statewide concern, safeguards
18 are needed to improve borrower protections against improper
19 lending practices and to enable state regulators and local
20 prosecutors to prevent these practices from occurring in the future.

21 (f) Therefore, it is the intent of the Legislature that this division
22 apply statewide to all loans secured by real property.

23 SEC. 2. Division 1.6 (commencing with Section 4970) is
24 added to the Financial Code, to read:

25
26 **DIVISION 1.6. BEST LENDING STANDARDS FOR LOANS**
27 **SECURED BY REAL PROPERTY**
28

29 **CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**
30

31 4970. For purposes of this division:

32 (a) "Consumer loan" shall mean a loan secured by real
33 property located in this state that is improved by a one-to-four
34 family dwelling with proceeds intended by the borrower for use
35 primarily for personal, family, or household purposes.

36 (b) "Licensing agency" shall mean the Department of Real
37 Estate for licensed real estate brokers, the Department of
38 Corporations for licensed residential mortgage lenders and
39 licensed finance lenders and brokers, and the Department of

1 *Financial Institutions for commercial and industrial banks and*
2 *savings associations and credit unions organized in this state.*

3 (c) *“Licensed person” means a real estate broker licensed*
4 *under the Real Estate Law (Section 10000 et seq. of the Business*
5 *and Professions Code), a finance lender or broker licensed under*
6 *the California Finance Lenders Law (Section 22000 et seq. of the*
7 *Financial Code), a residential mortgage lender licensed under the*
8 *California Residential Mortgage Lending Act (Section 50000 et*
9 *seq. of the Financial Code), a commercial or industrial bank*
10 *organized under the Banking Law (Section 99 et seq. of the*
11 *Financial Code), a savings association organized under the*
12 *Savings Association Law (Section 5000 et seq. of the Financial*
13 *Code), and a credit union organized under the California Credit*
14 *Union Law (Section 14000 et seq. of the Financial Code). A*
15 *federally chartered institution that is not required to be licensed by*
16 *a state licensing agency is subject to the same requirements of this*
17 *division and any violation of this division shall be subject to*
18 *enforcement of the appropriate federal agency.*

19 (d) *“Originate” shall mean to arrange, negotiate, process,*
20 *underwrite, or make a consumer loan.*

21 (e) *“Improper lending practices” shall mean unlawful, unfair,*
22 *deceptive, or fraudulent lending practices.*

23 4971. (a) *Any licensed person who originates any consumer*
24 *loan shall establish and implement on a continuous basis a best*
25 *lending practices plan. The purpose of this plan shall be the*
26 *development of best lending practices with respect to these*
27 *consumer loans, and the implementation of a system to ensure*
28 *continued compliance with these practices. The elements of this*
29 *plan shall include, but not be limited to, all of the following:*

30 (1) *Adopting best lending standards which are designed to*
31 *prevent improper lending practices, including, at a minimum,*
32 *violations of Section 4973.*

33 (2) *Training personnel concerning the use of best lending*
34 *standards and the detection and prevention of improper lending*
35 *practices.*

36 (3) *Reviewing the performance of employees, agents, and*
37 *independent contractors in complying with best lending standards.*

38 (4) *Taking adverse action against employees, agents, and*
39 *independent contractors that engage in a pattern of improper*
40 *lending practices.*

1 (5) *Reporting improper lending practices that have resulted in*
2 *termination of an employee, agent or independent contractor to*
3 *the licensed person's executive office and the appropriate*
4 *licensing agency.*

5 (6) *Making good faith efforts to resolve in a prompt and*
6 *reasonable manner each consumer complaint relating to improper*
7 *lending practices no later than 60 days of receipt of the complaint.*
8 *Resolution of a consumer complaint by the licensed person under*
9 *this paragraph shall not absolve the licensed person from any*
10 *other administrative, civil, or criminal actions. The licensed*
11 *person shall maintain a system of aging of complaints that*
12 *describes the nature and the disposition of the complaint.*

13 (b) *Every licensed person shall, as necessary, update its best*
14 *lending practices plan at least annually. At the time disclosures are*
15 *made pursuant to Regulation Z (12 C.F.R. 226), the licensed*
16 *person shall provide the prospective borrower with a separate*
17 *written notice printed in at least 14-point type. The notice shall*
18 *include a statement that the licensed person has implemented a*
19 *best lending practices plan, explain the manner in which the*
20 *prospective borrower may request and obtain a copy of the plan,*
21 *and provide a telephone number to call for inquiries concerning*
22 *the plan. In addition, the licensed person shall disclose the plan to*
23 *its prospective borrowers and licensing agency, upon request and*
24 *at the time of the origination of the loan. The plan shall include a*
25 *telephone number to call for inquiries concerning the plan.*

26 (c) *Every licensed person shall make a written or electronic*
27 *copy of its best practices plan available to the public upon request*
28 *and shall make a written copy available at the licensed person's*
29 *place of business.*

30
31 CHAPTER 2. PROHIBITED ACTS
32

33 4973. *No licensed person shall do any of the following with*
34 *regards to a consumer loan:*

35 (a) *Violate any provision of any of the following:*

36 (1) *Federal Truth in Lending Act and any regulation adopted*
37 *thereunder.*

38 (2) *Federal Home Ownership and Equity Protection Act and*
39 *any regulation adopted thereunder.*

1 (3) *Federal Real Estate Settlement Procedures Act and any*
2 *regulation adopted thereunder.*

3 (4) *Section 1670.5 of the Civil Code.*

4 (b) *Fail to take into consideration in determining the size and*
5 *duration of loans, when making or arranging loans, the financial*
6 *ability of a borrower to repay the loan from income in the time and*
7 *manner provided in the loan contract.*

8 (c) *Contract for or collect any charge or other fee that exceeds*
9 *the amount disclosed on any written disclosure statement unless*
10 *that charge or fee was not reasonably foreseeable at the time of the*
11 *written disclosure and the licensed person provides to the*
12 *borrower, not less than three days prior to the signing of the loan*
13 *closing documents, a clear and written explanation of the charge*
14 *or fee and the reason for exceeding the amount previously*
15 *disclosed and the fee is otherwise permitted by any other provision*
16 *of law.*

17 (d) *Sell under the authority of a license promissory notes or*
18 *interests in notes evidencing loans made pursuant to the Home*
19 *Ownership and Equity Protection Act, without disclosing that*
20 *these loans were made pursuant to that law to the purchasers of*
21 *these notes or interests.*

22 (e) *Fail to establish and implement on a continuous basis the*
23 *best lending practices plan pursuant to subdivision (a) of Section*
24 *4971.*

25 (f) *Fail to comply with any of the update and disclosure*
26 *requirements of subdivision (b) of Section 4971.*

27 (g) *Sell disability, unemployment, life and property credit*
28 *insurance or other similar products, where the borrower is not*
29 *informed that the product or service is not required in order to*
30 *obtain the loan and where it is not disclosed that the full cost of the*
31 *product or service to the borrower is, or is not, spread over the life*
32 *of the loan.*

33 (h) *Fail to offer a borrower, or advise a borrower of, the full*
34 *range of products that the licensed person offers and for which the*
35 *borrower qualifies.*

36 (i) *Make a subsequent loan to refinance the original loan that*
37 *results in no economic benefit to the borrower.*

38 (j) *Charge points, fees or other finance charges that,*
39 *considering the consumer loan transaction as a whole, including*
40 *the creditworthiness of the consumer, the terms of the loan, the*

1 value of the collateral, and the consumer's equity in the collateral,
2 exceed the usual and customary charges incurred by consumers
3 generally in this state for those points, fees, or other finance
4 charges for a similar loan or product.

5 (k) (1) Require a prepayment penalty where the prepayment
6 penalty does not provide some benefit to the borrower, such as a
7 rate or fee reduction.

8 (2) Fail to offer a borrower the choice of another mortgage
9 product that does not require a prepayment penalty.

10 (3) Fail to adequately disclose to the borrower the terms of the
11 mortgage provision that requires a prepayment penalty.

12 (4) Fail to charge the prepayment penalty when the mortgage
13 debt is accelerated as the result of the borrower's default in making
14 his or her mortgage payments.

15 (5) Cover a prepayment penalty through a new loan where there
16 is no economic benefit that equals or exceeds the prepayment
17 penalty for the borrower.

18 (l) Pay a contractor under a home-improvement contract from
19 the proceeds of a loan unless (1) the lender is presented with a
20 signed and dated completion certificate signed by the borrower
21 showing that the home improvements have been completed to the
22 satisfaction of the borrower; or (2) the instrument is payable to the
23 borrower, jointly to the contractor and the borrower, or at the
24 election of the borrower, through a third-party escrow agent in
25 accordance with terms established in a written agreement signed
26 by the borrower, the lender, and the contractor prior to the
27 disbursement.

28 (m) Make a loan to a borrower who the lender reasonably
29 knows or suspects is mentally incapacitated.

30 (n) Disburse the loan proceeds in a form other than direct
31 deposit to the borrower's account, wire, bank or certified check,
32 Automated Clearing House (ACH) Network funds transfer, or
33 attorney's check drawn on a trust account. A licensed person may
34 apply to its licensing agency for a waiver of the requirements of this
35 subdivision by demonstrating, in a letter application, that it has
36 adopted or will adopt another method of disbursement of loan
37 proceeds that will satisfy the purposes of this subdivision.

38 (o) Fail to disburse funds in accordance with a commitment to
39 make a loan that is accepted by the applicant.

1 (p) Charge or accept fees at closing that are not disclosed to the
2 borrower on the federal HUD-1 Settlement Statement.

3 (q) Commit an act in violation of Section 2941 of the Civil
4 Code.

5 (r) Obtain or induce an agreement or other instrument in which
6 blanks are left to be filled in after execution.

7 (s) Delay closing of a loan for the sole purpose of increasing
8 interest, costs, fees, or charges payable by the borrower.

9 (t) Engage in fraudulent and deceptive underwriting practices.

10 (u) Make payment of any kind, whether directly or indirectly, to
11 an in-house or fee appraiser of a government or private money
12 lending agency, with which an application for a loan has been
13 filed, for the purpose of influencing the independent judgment of
14 the appraiser with respect to the value of real estate that is to be
15 covered by the loan.

16 (v) Engage in any acts in violation of Section 17200 or 17500
17 of the Business and Professions Code.

18 (w) Use a deceptive subterfuge or device, or misrepresent,
19 circumvent, or conceal any material aspect or information
20 regarding a transaction to which it is a party.

21 (x) Do an act, whether specifically prohibited by this section or
22 of a different character, that constitutes fraud or dishonest
23 dealings.

24 (y) Commit an act in violation of Section 1695.13 of the Civil
25 Code.

26 (z) Require a borrower to pay interest on the loan for a period
27 in excess of one day prior to recording of the mortgage or deed of
28 trust. Notwithstanding the foregoing, if the borrower affirmatively
29 requests, and the licensee agrees, that the recording will occur on
30 Monday, or a day immediately following a bank holiday, interest
31 may commence to accrue on the business day immediately
32 preceding the day of recording, provided the following is disclosed
33 to the borrower in writing:

34 (1) The amount of additional per diem interest charged to
35 accommodate recording on Monday or the day following a
36 holiday, as the case may be.

37 (2) That it may be possible to avoid the additional per diem
38 interest charge by recording the loan or deed of trust on a day
39 immediately following a business day. This disclosure shall be
40 provided to the borrower when the parties establish the recording

1 *date, and the borrower shall acknowledge the additional interest*
2 *charge by signing the disclosure instrument.*

3
4 *CHAPTER 3. ENFORCEMENT*
5

6 *4974. (a) Any licensed person, or the head officer or*
7 *manager at the business location where a violation of this division*
8 *occurs, who with knowledge directly or indirectly controls and*
9 *induces any person to violate any provision of Section 4973 shall*
10 *be deemed to be in violation of that provision to the same extent as*
11 *the controlled and induced person.*

12 *(b) Any licensed person that knowingly provides substantial*
13 *assistance to another person in violation of any provision of*
14 *Section 4973 shall be deemed to be in violation of that provision*
15 *to the same extent as the person to whom assistance was provided.*

16 *(c) It shall be unlawful for any licensed person to directly or*
17 *indirectly do any act or thing that would be unlawful for that*
18 *licensed person to do under any provision of Section 4973 through*
19 *or by any other person.*

20 *4975. (a) (1) Any licensed person who violates any*
21 *provision of Section 4973 shall be deemed to have violated that*
22 *person's licensing law.*

23 *(2) After any action under paragraph (2) of subdivision (a) of*
24 *Section 4976 resulting in a conviction, the licensing agency shall*
25 *bring a proceeding to suspend the license of the licensed person for*
26 *not less than six months.*

27 *(b) After any action under paragraph (3) of subdivision (a) of*
28 *Section 4976 resulting in a conviction, the licensing agency shall*
29 *bring a proceeding to permanently revoke the license of the*
30 *licensed person.*

31 *(c) Any civil, criminal, and administrative authority and*
32 *remedies available to the licensing agency pursuant to its licensing*
33 *law may be sought and employed in any combination deemed*
34 *advisable by the licensing agency to enforce the provisions of this*
35 *division.*

36 *(d) A licensing agency may exercise any and all authority and*
37 *powers available to it under any other provisions of law, to*
38 *administer and enforce this division, including, but not limited to,*
39 *investigating and examining the licensed person's best practices*
40 *plan, books, and records, and charging for and collecting the costs*

1 of these activities. A licensing agency shall examine a licensed
2 person's compliance with this division when conducting an
3 examination.

4 (e) Nothing in this section shall be construed to impair or
5 impede a licensing agency's authority under any other provision
6 of law.

7 4976. (a) A licensed person who violates any provision of
8 Section 4973 shall, upon conviction, be subject to the following:

9 (1) For the first violation, a fine equal to the total loan amounts
10 originated in violation of Section 4973, or up to one million dollars
11 (\$1,000,000).

12 (2) For the second violation, a fine equal to twice the total loan
13 amounts originated in violation of Section 4973, or up to five
14 million dollars (\$5,000,000), or imprisonment in a county jail for
15 up to six months, or both fine and imprisonment.

16 (3) For the third and subsequent violation, a fine equal to three
17 times the loan amounts originated in violation of Section 4973, or
18 up to ten million dollars (\$10,000,000), or imprisonment in the
19 county jail for up to one year, or by both fine and imprisonment.

20 (b) An action under this section shall be brought by the district
21 attorney, and any penalty collected in an action shall be paid to the
22 treasurer of the county in which the judgment was rendered.
23 One-half of the penalty shall be allocated by the county to
24 programs that educate consumers about avoiding predatory
25 lending practices, community-based programs to provide low-cost
26 alternatives to subprime credit and consumer complaint resolution
27 services. The other half of the penalty may be allocated by the
28 county for enforcement.

29 (c) Nothing in this division limits the power of the state to
30 punish any person for any conduct which constitutes a crime under
31 any other statute.

32 4977. (a) In addition to any other remedies available to it
33 under any other provision of law, a licensing agency may bring a
34 civil action against a licensed person who has violated any
35 provision of this division, which shall be brought in the name of the
36 people of the State of California in any court of competent
37 jurisdiction, and the licensed person shall be liable for the
38 following penalties:

1 (1) For the first violation, a fine equal to the total loan amounts
2 originated in violation of Section 4973, or up to one million dollars
3 (\$1,000,000).

4 (2) For the second violation, a fine equal to twice the total loan
5 amounts originated in violation of Section 4973, or up to five
6 million dollars (\$5,000,000).

7 (3) For the third and subsequent violation, a fine equal to three
8 times the loan amounts originated in violation of Section 4973, or
9 up to ten million dollars (\$10,000,000).

10 (b) Nothing in this division shall prevent a private party from
11 bringing a civil action for enforcement for a violation of the
12 division's provisions. Nothing in this division requires exhaustion
13 of administrative remedies prior to a private party bringing a civil
14 action for enforcement.

15 (c) The amounts collected under subdivision (a) shall be
16 deposited in the appropriate fund of the licensing agency to be used
17 by that licensing agency, subject to appropriation by the
18 Legislature, for the purposes of education and enforcement in
19 connection with predatory lending.

20 (d) If the licensing agency determines that it is in the public
21 interest, the licensing agency may include, in any action for
22 penalties authorized by subdivision (a), a claim for relief in
23 addition to the penalties, including a claim for restitution,
24 disgorgement, or damages on behalf of the persons injured by the
25 violation, and the court shall have jurisdiction to award the
26 additional relief.

27 (e) Nothing in this section shall be construed to impair or
28 impede the Attorney General from representing a licensing agency
29 in bringing an action to enforce this division at the request and on
30 behalf of the licensing agency. Nor shall this section be construed
31 to impair or impede an action under any other provision of law
32 including Sections 17200 and 17500 of the Business and
33 Professions Code.

34 (f) In any action brought by the licensing agency or district
35 attorney under this division, the licensing agency or district
36 attorney shall be entitled to recover costs which, in the discretion
37 of the court, may include an amount representing reasonable
38 attorneys fees and investigative expenses for services rendered for
39 deposit in the appropriate fund of that state or local agency.

(g) *The Attorney General, a district attorney, or a city attorney, may bring an action to seek relief provided pursuant to this section against a federally chartered institution engaged in the business of lending in this state who has violated any provision of this division.*

4978. *A licensed person, in providing real estate brokerage services, as defined in Section 10131 of the Business and Professions Code, to a consumer, is acting as the agent of the consumer and owes that consumer a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the broker is authorized to act as an agent for any other person relative to the transaction, the broker shall disclose that fact and the identification of that person in a written statement.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~following:~~

~~(a) There has been an explosion in the amount of credit made available to low income borrowers in recent years, as a result of economic growth, technological changes, and financial innovations. A significant portion of this expansion has occurred in the subprime lending market, which refers to lending to borrowers who do not qualify for prime rates, either because of impaired credit histories or low incomes. According to the United States Department of the Treasury, subprime lending nationwide increased from \$35 billion in 1994 to \$370 billion in 1999.~~

~~(b) Subprime loans often are structured as mortgage refinancings or second mortgages. Approximately 70 percent of subprime loans are for consumer credit card consolidation. Most subprime loans are made by nondepository finance or mortgage companies that are not subject to routine regulatory compliance review.~~

~~(c) Many subprime lenders offer a vital service to low-income borrowers who do not qualify for credit from mainstream financial institutions. However, many low-income borrowers have been victimized by improper subprime lending practices such as excessive fees and interest rates, repetitive refinancings, hidden costs, unnecessary insurance, and deceptive use of balloon payments. The abusive practices found in the subprime lending industry are referred to as predatory lending. Through misleading and deceptive sales practices, predatory lenders target cash-poor homeowners as customers for high-cost loans that often deprive these homeowners of the equity in their homes.~~

~~(d) It is the intent of the Legislature to improve consumers protection against predatory lending practices.~~

~~SEC. 2. Section 10247.5 is added to the Business and Professions Code, to read:~~

~~10247.5. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent to a consumer whose household income is at or below 120 percent of the median household income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.~~

~~(b) A "high-cost" loan means a loan that is either of the following:~~

~~(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.~~

~~(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.~~

~~(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:~~

~~(1) The making of a subsequent loan to refinance the original loan, also known as "flipping," that results in no net substantial economic benefit to the borrower.~~

1 ~~(2) The selling of additional products in a loan agreement, also~~
2 ~~known as “packing.”~~

3 ~~(3) The making of a loan without regard to the borrower’s~~
4 ~~ability to repay, considering the borrower’s current and expected~~
5 ~~income, current obligations, and employment status.~~

6 ~~(4) The charging of fees for loan services that bear no~~
7 ~~reasonable relationship to the value and cost of services actually~~
8 ~~performed.~~

9 ~~SEC. 3. Chapter 7.6 (commencing with Section 1922) is~~
10 ~~added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:~~

11
12 ~~CHAPTER 7.6. LOANS SECURED BY REAL PROPERTY~~
13

14 ~~1922. (a) Notwithstanding any other provision of law, this~~
15 ~~section shall apply to all high-cost residential mortgage loans and~~
16 ~~consumer loans secured by liens on real property made or serviced~~
17 ~~by a real estate broker or agent, a commercial or industrial bank,~~
18 ~~a savings association, or a finance lender to a consumer whose~~
19 ~~household income is at or below 120 percent of the median~~
20 ~~household income of the standard metropolitan statistical area in~~
21 ~~which the consumer resides or the nearest area if the consumer~~
22 ~~does not reside within a standard metropolitan statistical area.~~

23 ~~(b) A “high-cost” loan means a loan that is either of the~~
24 ~~following:~~

25 ~~(1) The annual percentage rate at consummation will exceed by~~
26 ~~more than 5 percentage points the yield on Treasury securities~~
27 ~~having comparable periods of maturity to the loan maturity as of~~
28 ~~the 15th day of the month immediately proceeding the month in~~
29 ~~which the application for the extension of credit is received by the~~
30 ~~creditor.~~

31 ~~(2) The total points and fees payable by the consumer at or~~
32 ~~before loan closing will exceed 5 percent of the total loan amount.~~

33 ~~(c) Predatory lending practices are prohibited in the making~~
34 ~~and servicing of high-cost loans. These practices include, but are~~
35 ~~not limited to, the following:~~

36 ~~(1) The making of a subsequent loan to refinance the original~~
37 ~~loan, also known as “flipping,” that results in no net substantial~~
38 ~~economic benefit to the borrower.~~

39 ~~(2) The selling of additional products in a loan agreement, also~~
40 ~~known as “packing.”~~

~~(3) The making of a loan without regard to the borrower's ability to repay, considering the borrower's current and expected income, current obligations, and employment status.~~

~~(4) The charging of fees for loan services that bear no reasonable relationship to the value and cost of services actually performed.~~

~~(d) (1) Before any person may provide real estate brokerage services, as defined in Section 10131 of the Business and Professions Code, to a borrower for a loan contract subject to this section, the broker shall enter into a written loan brokerage contract with the borrower that satisfies the requirement of this section.~~

~~(2) The loan brokerage contract shall contain an explicit statement that the broker is acting as the agent of the borrower in providing brokerage services to the borrower, and when acting as agent for the borrower, the broker owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the broker is authorized to act as an agent for any other person relative to the transaction, the loan brokerage contract shall contain a statement of that fact and identification of that person.~~

~~(3) The loan brokerage contract shall contain a detailed description of the services that the broker agrees to perform for the borrower, and a good faith estimate of any fees the broker will receive for those services, whether paid by the borrower, the institutional lender, or both.~~

~~(4) The loan brokerage contract shall include a clear and conspicuous statement of the conditions under which the borrower is obligated to pay the broker for brokerage services rendered under the contract.~~

~~(5) The loan brokerage contract shall provide that, if the broker makes a false or deceptive statement or omission about a fact that is material in the inducement or implementation of the contract, a court may, in addition to any other legal rights or remedies, do any of the following:~~

~~(A) Rescind the loan brokerage contract.~~

~~(B) Award fees paid by the borrower to the broker for brokerage services rendered by the broker pursuant to the loan brokerage contract.~~

~~(C) Award actual costs, including attorney's fees, for enforcing the borrower's rights under the loan brokerage contract.~~

~~SEC. 4. Section 3398 is added to the Financial Code, to read:~~

~~3398. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a commercial or industrial bank to a consumer whose household income is at or below 120 percent of the median household income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.~~

~~(b) A "high-cost" loan means a loan that is either of the following:~~

~~(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.~~

~~(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.~~

~~(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:~~

~~(1) The making of a subsequent loan to refinance the original loan, also known as "flipping," that results in no net substantial economic benefit to the borrower.~~

~~(2) The selling of additional products in a loan agreement, also known as "packing."~~

~~(3) The making of a loan without regard to the borrower's ability to repay, considering the borrower's current and expected income, current obligations, and employment status.~~

~~(4) The charging of fees for loan services that bear no reasonable relationship to the value and cost of services actually performed.~~

~~SEC. 5. Section 7508 is added to the Financial Code, to read:~~

~~7508. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a savings association to a consumer whose household income~~

1 is at or below 120 percent of the median household income of the
2 standard metropolitan statistical area in which the consumer
3 resides or the nearest area if the consumer does not reside within
4 a standard metropolitan statistical area.

5 (b) A “high-cost” loan means a loan that is either of the
6 following:

7 (1) The annual percentage rate at consummation will exceed by
8 more than 5 percentage points the yield on Treasury securities
9 having comparable periods of maturity to the loan maturity as of
10 the 15th day of the month immediately preceding the month in
11 which the application for the extension of credit is received by the
12 creditor.

13 (2) The total points and fees payable by the consumer at or
14 before loan closing will exceed 5 percent of the total loan amount.

15 (c) Predatory lending practices are prohibited in the making
16 and servicing of high cost loans. These practices include, but are
17 not limited to, the following:

18 (1) The making of a subsequent loan to refinance the original
19 loan, also known as “flipping,” that results in no net substantial
20 economic benefit to the borrower.

21 (2) The selling of additional products in a loan agreement, also
22 known as “packing.”

23 (3) The making of a loan without regard to the borrower’s
24 ability to repay, considering the borrower’s current and expected
25 income, current obligations, and employment status.

26 (4) The charging of fees for loan services that bear no
27 reasonable relationship to the value and cost of services actually
28 performed.

29 SEC. 6. Section 22168 is added to the Financial Code, to read:

30 22168. (a) Notwithstanding any other provision of law, this
31 section shall apply to all high-cost residential mortgage loans and
32 consumer loans secured by liens on real property made or serviced
33 by a finance lender to a consumer whose household income is at
34 or below 120 percent of the median household income of the
35 standard metropolitan statistical area in which the consumer
36 resides or the nearest area if the consumer does not reside within
37 a standard metropolitan statistical area.

38 (b) A “high-cost” loan means a loan that is either of the
39 following:

1 ~~(1) The annual percentage rate at consummation will exceed by~~
2 ~~more than 5 percentage points the yield on Treasury securities~~
3 ~~having comparable periods of maturity to the loan maturity as of~~
4 ~~the 15th day of the month immediately proceeding the month in~~
5 ~~which the application for the extension of credit is received by the~~
6 ~~creditor.~~

7 ~~(2) The total points and fees payable by the consumer at or~~
8 ~~before loan closing will exceed 5 percent of the total loan amount.~~

9 ~~(c) Predatory lending practices are prohibited in the making~~
10 ~~and servicing of high cost loans. These practices include, but are~~
11 ~~not limited to, the following:~~

12 ~~(1) The making of a subsequent loan to refinance the original~~
13 ~~loan, also known as “flipping,” that results in no net substantial~~
14 ~~economic benefit to the borrower.~~

15 ~~(2) The selling of additional products in a loan agreement, also~~
16 ~~known as “packing.”~~

17 ~~(3) The making of a loan without regard to the borrower’s~~
18 ~~ability to repay, considering the borrower’s current and expected~~
19 ~~income, current obligations, and employment status.~~

20 ~~(4) The charging of fees for loan services that bear no~~
21 ~~reasonable relationship to the value and cost of services actually~~
22 ~~performed.~~

23 ~~SEC. 7. Section 50511 is added to the Financial Code, to read:~~

24 ~~50511. (a) Notwithstanding any other provision of law, this~~
25 ~~section shall apply to all high-cost residential mortgage loans and~~
26 ~~consumer loans secured by liens on real property made or serviced~~
27 ~~by a residential mortgage lender to a consumer whose household~~
28 ~~income is at or below 120 percent of the median household income~~
29 ~~of the standard metropolitan statistical area in which the consumer~~
30 ~~resides or the nearest area if the consumer does not reside within~~
31 ~~a standard metropolitan statistical area.~~

32 ~~(b) A “high-cost” loan means a loan that is either of the~~
33 ~~following:~~

34 ~~(1) The annual percentage rate at consummation will exceed by~~
35 ~~more than 5 percentage points the yield on Treasury securities~~
36 ~~having comparable periods of maturity to the loan maturity as of~~
37 ~~the 15th day of the month immediately proceeding the month in~~
38 ~~which the application for the extension of credit is received by the~~
39 ~~creditor.~~

~~(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.~~

~~(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:~~

~~(1) The making of a subsequent loan to refinance the original loan, also known as “flipping,” that results in no net substantial economic benefit to the borrower.~~

~~(2) The selling of additional products in a loan agreement, also known as “packing.”~~

~~(3) The making of a loan without regard to the borrower’s ability to repay, considering the borrower’s current and expected income, current obligations, and employment status.~~

~~(4) The charging of fees for loan services that bear no reasonable relationship to the value and cost of services actually performed.~~

~~SEC. 8.—No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~